

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Richard Eugene Warren, #70874-083,)	
)	C/A No. 3:09-1756-MBS-JRM
Plaintiff,)	
)	
vs.)	
)	
Federal Bureau of Prisons; D. Drew,)	ORDER
Warden; Cpt. Delray; Lt. Brawley;)	
Officer Feltz, Unknown Officer I;)	
Unknown Officer II; and Does I thru X,)	
)	
Defendants.)	
_____)	

Plaintiff Richard Eugene Warren is an inmate in custody of the Federal Bureau of Prisons (FBOP) who currently is incarcerated at FCI-Bennettsville in Bennettsville, South Carolina. Plaintiff filed the within action on July 2, 2009, seeking damages pursuant to the Federal Tort Claims Act. In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Joseph R. McCrorey for pretrial handling. On July 9, 2009, the Magistrate Judge issued an order informing Plaintiff that the case was not in proper form. The Magistrate Judge instructed Plaintiff to within twenty days (1) complete and sign Form AO 240 (application to proceed without prepayment of fees and affidavit); (2) complete a financial certificate; (3) complete summons forms for each Defendant as well as for the Attorney General of the United States and the United States Attorney for the District of South Carolina; and (4) complete, sign, and return Form USM-285s for each Defendant. On September 8, 2009, after no action was taken by Plaintiff, the court dismissed the case without prejudice.

This matter is before the court on motion for reconsideration filed by Plaintiff on September

21, 2009. Plaintiff contends that he remitted the documents to the court. He also contends that he served documents on FBOP, the United States Attorney General, and the United States Attorney for the District of South Carolina.¹ In addition, Plaintiff states that he declined to complete Form AO 240 because he wished to have the court remit an invoice for any charges that may be required. Based on these representations, Plaintiff moves the court to vacate its order of September 8, 2009.

The court will vacate its September 8, 2009 order dismissing the case without prejudice. It appears that Plaintiff wishes to comply with the Magistrate Judge's order, although he has not done so, or followed the directions given to him. The Clerk of Court is directed to send Plaintiff a duplicate copy of the Magistrate Judge's order of July 9, 2009, as well as enclosures. Plaintiff will have until November 27, 2009, to comply with the Magistrate Judge's order with respect to completing the summons forms and Form USM-285s. With respect to payment of fees, Plaintiff is instructed that he shall either properly complete the Form AO-240 and financial certificate or remit to the court a money order in the amount of \$350.00 to pay the civil case filing fee in full.

Plaintiff is cautioned that his failure to comply with the court's order could subject his case to dismissal pursuant to Fed. R. Civ. P. 41(b), which provides:

Involuntary Dismissal: Effect Thereof. For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant. **UNLESS THE COURT IN ITS ORDER FOR DISMISSAL OTHERWISE SPECIFIES, A DISMISSAL UNDER THIS SUBDIVISION AND ANY DISMISSAL NOT PROVIDED FOR IN THIS RULE, OTHER THAN A DISMISSAL FOR LACK OF JURISDICTION, FOR IMPROPER VENUE, OR FOR FAILURE TO JOIN A PARTY UNDER RULE 19, OPERATES AS AN ADJUDICATION UPON THE MERITS.**

¹ Plaintiff states in his letter that he attached copies of the certified mail receipts that he used for each party; however, no receipts were attached to his motion.

(Emphasis added.)

Should Plaintiff satisfactorily comply with the within order and the Magistrate Judge's order, the case will be remitted to the Magistrate Judge for additional pretrial handling. Should Plaintiff fail to satisfactorily comply, the court will take appropriate action to dismiss the case.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina

November 4, 2009.